

MEMORANDUM

DEPARTMENT OF ENVIRONMENTAL QUALITY

WASTE DIVISION
OFFICE OF SPILL RESPONSE AND REMEDIATION

Mail Address:
P.O. Box 1105
Richmond, VA 23218

Location:
629 East Main Street
Richmond, VA 23219

SUBJECT: Underground Storage Tank (UST) Regulation TAC Meeting Minutes—
February 8, 2008 at DEQ-PRO

TO: Cindy Berndt

FROM: Russ Ellison

DATE: February 12, 2008

COPIES: Fred Cunningham, Renee Hooper, Tom Madigan

The second UST TAC meeting was called to order at 1:10pm at the Piedmont Office of DEQ, 4949 Cox Road, Glen Allen, VA.

Attending:

In attendance were: **Renee Hooper, Fred, Cunningham, Tom Madigan, Russ Ellison** all from (DEQ);

Suzanne Ankrum, Program Coordinator, Virginia Conservation Network, 422 East Franklin Street, Suite 303, Richmond, VA 23219, 804-644-0283, 804-644-0286, suzanne@vcnva.org

Peter Baird, F.W. Baird, 27801 Reams Drive, Petersburg, VA 23805 (804) 748-6887 pbaird@bairdpetroleum.com

Jeffery T. Howard, Environmental Manager, Chesterfield County, 9846 Lori Road, Suite 200, Chesterfield, VA 23832, howardjt@chesterfield.gov, (804) 717-6531 representative for Larry Land, Director of Policy, Virginia Association of Counties,

Dan Laing, Fuel Manager, VDOT Equipment Division, 6600 West Broad Street – Brookfield, Richmond, VA 23230 Daniel.Laing@VDOT.Virginia.gov

Mike O'Connor, President, VA Petroleum Convenience and Grocery Association (804) 282-7534 mike@vpcga.com – and **Wes Diggs**

Emory Rodgers, Deputy Director of Building & Fire Regulation, Department of Housing & Community Development (DHCD), Telephone: (804) 371-7000, Fax: (804) 371-7090 The Jackson Center, 501 North Second Street, Richmond, Virginia 23219-1321 Emory.Rodgers@dhcd.virginia.gov

Suzanne Parker Schweikart, Environmental Compliance Specialist, Chesapeake/Northeast/Great Lakes Divisions, 7-Eleven, Inc. (757) 490-6339 SWalte01@7-11.com

Jim Thornhill, Attorney, Partner, McGuire Woods Law Firm, jthornhill@mcguirewoods.com, One James Center, 901 East Cary Street, Richmond, Virginia 23219-4030 T: 804.775.1163 F: 804.698.2191

Absent--Denise Thompson (or substitute), Virginia Municipal League, 13 E. Franklin St., Richmond, VA 23219, P.O. Box 12164, Richmond, VA 23241 804/649-8471, 804/343-3758 dthompson@vml.org
Public attendee: **Pat Hough**, Highland Tank Corporation.

Also attending were Steve Pollock and Sam Lillard of DEQ.

Mr. Ellison opened the meeting and asked if there were any additional questions or concerns about the EPA guidelines.

Dan Laing asked if the guidelines said that secondary containment must equal a double walled tank? Could a tank owner use a tank bed liner? Peter Baird responded that liners don't work. Mr. Ellison commented that using a liner may create trouble rather than not and they have only been rarely used in the past.

No other TAC member raised any issues with the EPA guidelines.

Mr. Ellison thanked Emory Rodgers and Jim Thornhill for providing comments before the TAC meeting.

Mr. Ellison invited Mr. Rodgers to review his comments for the TAC. Mr. Rodgers stated that VDEQ and DHCD work to ensure compatibility. The USBC is written to try to minimize conflicts so that you don't have a building inspector and DEQ inspector telling you different things. His staff compared the proposed amendments to the current building code and proposed code and did not see any conflicts.

Mr. Ellison asked Mr. Thornhill to review his comments for the TAC. The following is a discussion of comments made by Mr. Thornhill:

Secondary Containment:

Mr. Thornhill suggested adding the term "redeveloped" to Section 7(c). He wanted to insert a timing element. The TAC discussed that the "new facility" language was meant to cover when someone is putting in a new facility-- we're looking at it at that time. Mike O'Connor asked if we would need to define "redeveloped". The TAC discussed the issue and agreed that the term "new facility" was adequate and "redeveloped" did not need to be added to the section".

Mr. Thornhill suggested clarifying language be added to Section d(2) to make sure the distance is measured between the closest of a series. DEQ staff will come up with appropriate language.

Delivery Prohibition:

Section B: adding the term "originally" in front of the term "installed". Mr. Thornhill suggested it should be made clear that section B should apply to the first installation of

the equipment. If not, then the agency should be careful of how it defines operational issues. Mr. Cunningham questioned whether “originally” was the correct term to use, citing the example of installing something the first time then being required to upgrade later to install new protections. What if the owner didn’t install the new upgrades correctly? Using the term “originally” would not reach those situations. Mr. Thornhill agreed that originally wasn’t the right term. Agreed that it needs to be functional, e.g., an impressed current cathodic protection systems must have the rectifier plugged in to be “originally operational”. Mr. Baird suggested that once you have tested the equipment originally and its operating effectively, then it’s considered installed. Mr. Madigan commented that this is perhaps a good line to draw between operational and. installed.

Authority: Mr. Thornhill questioned whether the agency had the authority to impose the requirements in Sections C and E. There followed a general discussion of the agency’s authority to impose requirements that appeared to exceed the bare minimum requirements in the EPA guidelines. Ms. Hooper reviewed the agency’s statutory authority to promulgate the regulatory amendments with the TAC and pointed out that the guidelines were designed to give the agency a number of options to choose from to craft its delivery prohibition program. She stated that the agency was well within the parameters laid out in the federal guidelines. Mr. Thornhill stated that he felt the discussion had addressed his concerns. No other TAC member expressed concern with the agency’s authority.

Section F: The agency should provide notice to the owner as well as operator, if different. Mr. Baird and Ms. Schweikart both commented that the agency should not have the notice consist simply of notice to a facility employee because it could get thrown away. Mr. Madigan and Ms. Hooper both said that notice should be mailed to the owner and operator as well as provided to employee at the facility. Mr. Ellison stated that the agency took the concept of delivery prohibition seriously and would follow due process.

Section G. Mr. Thornhill suggested requiring the agency to authorize removal of the delivery prohibition tag within 2 business days of confirming compliance. Ms. Hooper stated that the agency would need to balance the need to return someone’s livelihood with the agency’s resources. Mr. O’Connor suggested providing a time period for agency response with a provision that the agency would have to accept evidence of a work order as compliance and authorize tag removal if it did not authorize the tag removal within the prescribed period of time.

Mr. Ellison then opened discussion up to secondary containment changes. Mr. Madigan had a question about where the language on tank containment of 100% tank capacity came from and Mr. Ellison said it is in the original federal language.

A section by section review of the suggested changes was performed by Mr. Ellison to ask for any issues or concerns.

Section 25-580-10. Definitions: Mr. Ellison asked if there were any issues with the changes made to the Definitions section. Consensus that changes to Definitions section are acceptable and don't appear to need changes.

Section 25-580-50(7). Secondary Containment

Mr. Ellison asked if any TAC members had issues/concerns with changes made to Secondary Containment section.

7(a)(2) Mr. O'Connor asked when is a motor fuel dispenser considered new and Mr. Baird responded: If you take a dispenser off and don't change the piping then you don't need under dispenser containment? Mr. Ellison responded correct. Mr. Thornhill asked if you have to remove/replace the dispenser and equipment used to connect the dispenser (one of them) before the requirement kicks in and Mr. Ellison and Mr. Cunningham said "yes". Mr. Ellison then read the exact federal guideline language and Mr. Thornhill stated it was identical so staff could consider the option to change it to clarify by having section 7.b(2) then read that "this equipment used to connect the UST to the dispenser may include." And begin the next sentence "The" instead of "This".

The TAC had no additional comments or issues on section 25-580-50(7) Secondary Containment.

Section 25-580-140: Mr. Ellison asked if any TAC members had issues/concerns with changes made to section 25-580-140: TAC members had no comments or issues with the suggested language.

Section 25-580-370: Mr. Ellison asked if any TAC members had issues/concerns with section 370.

Section 370(F)-Notice: Mr. O'Connor suggested that the regulation require the tank owner and operator to notify his supplier.

Section 370(A): Mr. Thornhill suggested in 25-580-370.A. that "identified" should be changed to "classified". There was agreement to make the change.

The TAC engaged in a discussion prompted by Ms. Schweikart concerning whether Virginia should have a program requiring testing of secondary containment, to include spill buckets. Mr. Ellison stated that EPA has indicated that the spill bucket is not considered a part of the UST tank and pipe and thus not required to have secondary containment and any spill bucket testing could become part of the performance of a spill bucket in the guidelines. Sumps and dispenser pans if integral to any required secondary containment system would be required to perform as designed.

Mr. Thornhill asked when the implementation guidance would be developed. Ms. Hooper replied that it would be developed once the draft regulation was proposed to the Board.

Some TAC members expressed concern with the timing of the guidance because of the perceived broadness of section 370(C). TAC members expressed a desire to see the process for delivery prohibition tagging a tank under sections 370(B) and (C) before deciding whether they have any additional issues with sections 370(B) and (C). Agency staff agreed to put together a rough draft of the process for tagging a tank for the TAC to review. A third TAC meeting will be scheduled to review and discuss the rough draft created by DEQ staff to demonstrate how DEQ intends to implement the delivery prohibition tag process.

The TAC had a brief ad hoc discussion of what to do in situations where the operator can't afford to keep enough fuel in the tank to do proper release detection.

The TAC agreed that only outstanding issues were the number of days the department has to reauthorize delivery and how the agency planned to implement sections 370(B) and (C).

The TAC members agreed that they did not want to approve the meeting minutes before posting on the Town Hall site.